



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/758,459	01/15/2004	Thomas Lummis	40661-031	5873
29493	7590	11/29/2006		
HUSCH & EPPENBERGER, LLC 190 CARONDELET PLAZA SUITE 600 ST. LOUIS, MO 63105-3441			EXAMINER MAI, TRI M	
			ART UNIT	PAPER NUMBER
			3781	

DATE MAILED: 11/29/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

88

<b>Office Action Summary</b>	<b>Application No.</b> 10/758,459	<b>Applicant(s)</b> LUMMIS ET AL.	
	<b>Examiner</b> Tri M. Mai	<b>Art Unit</b> 3781	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-14 is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed:
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

Art Unit: 3781

1. Claims 1-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

2. With respect to the optimizing relocation of forces, by physical laws, it seems that having more than one strap support would provide added security to the cover since the wind force on the cover would evenly distribute over the securing strap. Applicant's assertion that having only one would enhance the cover's ability to withstand peak wind condition is confusing and seems to contradict physic laws. Can applicant to provide any direct data on how the having only one support strap would enhance the cover's ability to withstand peak wind condition?<sup>7</sup>

3. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Porter (5904243), or in the alternative, under 35 U.S.C. 103(a) as being unpatentable over Porter in view of Frieder et al: (3011820). Porter teaches a the securing of a cover comprising the steps of placing the cover over the module and threading a securing strap through a channel in the cover and tightening the securing strap about the module as claimed. Porter meets all claimed limitations except for the limitation of having no more than one point of contact between the securing strap and support straps. It would have been obvious to one of ordinary skill in the art to provide only one support to provide the desired number of support and/or to save material. Furthermore, it would have been obvious to one of ordinary skill in this art to eliminate the other when its function is not desired. See, Ex parte Rainu, 168 USPQ 375 (PTO Bd. Of App. 1969).

In the alternative, Frieder teaches that it is known in the art to provide the sides with only one support (note figures 1, and 4). It would have been obvious to one of ordinary skill in the art

Art Unit: 3781

to provide only one support, as taught by Frieder, to provide the desired number of support and/or to save material.

4. Claim 1-3, 5, 6, 9-11, 13, and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over the Porter rejection, as set forth above, and further in view of either Horwath (2003/0226846) or Gallagher (4308905). It would have been obvious to one of ordinary skill in the art to provide another channel on the other end wall to provide added security. Furthermore, it would have been obvious to a person having ordinary skill in the art to duplicate parts for a multiplied effect (*St. Regis Paper Co. v. Bemis Co., Inc.*) 193 USPQ 8, 11 (7th Cir. 1977).

With respect to support strap at the midpoint, to have the only one support strap in the modified cover of Porter to be placed at the midpoint at the corresponding side walls would have been obvious to provide the desired placement of the support strap. Furthermore, Rearrange parts of an invention involves only routine skill in the art, see *In Re Japikse*, 86 USPQ 70 (CCPA) 1950.

Regarding claim 2, with respect of threading the strap through the first and second support straps, it would have been obvious to one of ordinary skill in the art to eliminate the rings so that the strap are threaded through the first and second support straps to save material. Note that it is within the skill of one of ordinary skill in this art to eliminate the other when its function is not desired. See, *Ex parte Rainu*, 168 USPQ 375 (PTO Bd. Of App. 1969).

There are two triangular sections in each of sidewalls as claimed. It is noted that the term section is broad, there are a plurality of section in the cover of Porter, include a triangular section as claimed.

Art Unit: 3781

To the degree it is argued that the cover of Porter does not teach the triangular sections, it would have been obvious to one of ordinary skill in the art to make the cover from various sections including triangular sections because construction of a product in unity or diversity would have been an obvious choice of manufacturing or convenience. See, *In re Zabel et al.* 38 C.C.P.A., 832, 186 F.2d 735, 88 USPQ 367.

5. Claims 4, 7 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over the Porter rejection as set forth in paragraph 4, and further in view of either Campbell (2705461) or Frieder et al. (3011820). It would have been obvious to one of ordinary skill in the art to provide diamond shaped loops, as taught by either Campbell or Frieder to provide an alternative shape loop.

6. Applicant's arguments filed have been fully considered but they are not persuasive. The amendment fails to read over the prior art of record. As set forth above, eliminating one support strap instead of having two as set forth in Porter would have been obvious since that it is within the skill of one of ordinary skill in this art to eliminate the other when its function is not desired. See, *Ex parte Rainu*, 168 USPQ 375 (PTO Bd. Of App. 1969). With respect to the optimizing relocation of forces, by physical laws, it seems that having more than one support would provide added security to the cover since the wind force on the cover would evenly distribute over the securing strap. Applicant's assertion that having only one would enhance the cover's ability to withstand peak wind condition is confusing and seems to contradict physics laws.

7. As set forth above, the cover as claimed is the same cover as disclosed in Porter with modifications that are deemed unpatentable, i.e., with respect of threading the strap through the first and second support straps. It would have been obvious to one of ordinary skill in the art to

Art Unit: 3781

eliminate the rings so that the strap are threaded through the first and second support straps to save material. Note that it is within the skill of one of ordinary skill in this art to eliminate the other when its function is not desired. See, *Ex parte Rainu*, 168 USPQ 375 (PTO Bd. Of App. 1969). Similarly with respect to the addition of the channel on the other end wall. It would have been obvious to a person having ordinary skill in the art to duplicate parts for a multiplied effect (*St. Regis Paper Co. v. Bemis Co., Inc.*)193 USPQ 8, 11 (7th Cir. 1977).

With respect to the diamond shaped loop, there is nothing in the specification shows how the diamond shaped loop would perform better than the loop as shown in Porter. Thus, the diamond shape loop is just another design for support strap. Furthermore, it would have been obvious to one of ordinary skill in the art to provide diamond shaped loops, as taught by either Campbell or Frieder to provide an alternative shape loop.

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Art Unit: 3781

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tri M. Mai whose telephone number is (571)272-4541. The examiner can normally be reached on 7:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on (571)272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Tri M. Mai  
Primary Examiner  
Art Unit 3781

